

**Sheet Metal Workers' International Association,
Local Union No. 104 and Ernest Ongaro &
Sons, Inc. Case 20-CB-9955**

February 27, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND FOX

On a charge filed April 26, 1995, by Ernest Ongaro & Sons, Inc., the General Counsel of the National Labor Relations Board issued a complaint August 11, 1995, against Sheet Metal Workers' International Association, Local Union No. 104 (Local 104), alleging that Local 104 violated Section 8(b)(3) of the Act by failing and refusing to bargain on an individual basis with Ernest Ongaro & Sons, Inc. (Ongaro). Local 104 filed a timely answer admitting in part and denying in part the allegations of the complaint.

On January 29, 1996, the General Counsel, Local 104, and Ongaro filed with the Board a stipulation of facts and a motion to transfer this case to the Board. The parties agreed that the stipulation, the appendix attached to the stipulation, the charge, affidavit of service of the charge, the complaint and notice of hearing, affidavit of service of the complaint and notice of hearing, letter requesting postponement of hearing, answer to the complaint, order rescheduling hearing, and affidavit of service of order rescheduling hearing, shall constitute the entire record and they waived a hearing before and decision by an administrative law judge. On April 9, 1996, the Board conditionally approved the stipulation and transferred the proceeding to the Board for issuance of a Decision and Order.¹ The General Counsel, Local 104, and Ongaro filed briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

On the entire record and the briefs, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

Ongaro, a corporation with an office and a place of business in San Anselmo, California, has been engaged as a plumbing, heating, and sheet metal contractor in the construction industry. During the 12-month period ending December 31, 1994, Ongaro, in conducting its business operations, purchased and received at its San

Anselmo, California facility goods valued in excess of \$50,000 directly from points outside the State of California.

The parties stipulated, and we find, that Ongaro is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that Local 104 is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Facts

Local 104, or its predecessor local, has been the collective-bargaining representative of Ongaro's unit employees for approximately 30 years.² Ongaro has recognized Local 104 as the collective-bargaining representative of its employees since 1958. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective from July 1, 1992, to June 30, 1995.

At all material times, the Redwood Empire Chapter, Sheet Metal and Air Conditioning Contractors' Association, Inc. (Redwood SMACNA), has been an organization composed of various employers, one purpose of which is to represent its employer-members in negotiating and administering collective-bargaining agreements with various labor organizations, including Local 104.

Ongaro has been a member of Redwood SMACNA since approximately 1958, at which time Ongaro authorized Redwood SMACNA to be its representative for the purpose of collective bargaining and for the adjustment of grievances. Pursuant to this authority, Ongaro was bound to the terms of the July 1, 1989, to June 30, 1992 Standard Form Union Agreement between Local 104 and Redwood SMACNA which expired June 30, 1992. That agreement contained an interest arbitration clause in article X, section 8, and an assignment of bargaining rights clause in article XIII, section 5, and in addendum one, item 45, section B.

On May 25, 1989, Richard Ongaro, owner of Ongaro, signed a recognition agreement recognizing Local 104 as the collective-bargaining representative of its employees.

At all times since May 25, 1989, based on Section 9(a) of the Act, Local 104 has been, and is, the exclusive collective-bargaining representative of the unit.

In two separate letters dated July 18, 1991, Ongaro notified both Redwood SMACNA and Local 104 that Redwood SMACNA was no longer authorized to be its representative for the purpose of collective bargaining

¹ The Board's approval of the stipulation was conditioned on the parties' submission of certain missing appendix pages and their further stipulating to a provision that apparently had been inadvertently omitted from their stipulation of facts, i.e., that at all material times the Employer has been an employer engaged in commerce within the meaning of Sec. 2(2), (6), and (7) of the Act. The parties subsequently submitted documents satisfying these conditions.

² The following employees of the Employer constitute a unit appropriate for collective bargaining:

All employee classifications set forth in the collective-bargaining agreement between the Employer and the Union in effect from July 1, 1992, to June 30, 1995, excluding guards and supervisors as defined in the Act.

for a successor collective-bargaining agreement. Ongaro is still a member of Redwood SMACNA, but by this letter withdrew authorization from it to negotiate collective-bargaining agreements and represent Ongaro in labor relations matters. Local 104 admits that this was a timely withdrawal with respect to the negotiations for a 1992-1995 successor agreement.

Richard Ongaro sent a letter dated January 22, 1992, to both Local 104 and Redwood SMACNA again notifying them that Ongaro had withdrawn from the multi-employer bargaining unit and had revoked Redwood SMACNA's authorization to bargain on its behalf for a successor collective-bargaining agreement. Article XIII, section 5, of the 1989-1992 Standard Form of Union Agreement required that such notice be given at least 150 days prior to the contract expiration date, which was June 30, 1992. Therefore, under the contract, Ongaro was required to give such notice by January 30, 1992.

By letter dated January 30, 1992, Judy S. Coffin, who at that time was Ongaro's attorney, reiterated the written notice of withdrawal of bargaining authorization.

Local 104 sent Ongaro a letter dated March 16, 1992, requesting negotiations for modifications, amendments, and changes in the provisions of the 1989-1992 Standard Form Union Agreement, and requesting negotiations with Ongaro's representatives.

Starting in approximately June 1992, Ernest P. Ongaro and Richard Ongaro met with Larry Whiteman and Dave Browning, business representatives for Local 104, to negotiate a new collective-bargaining agreement. Ongaro bargained independently with Local 104 for a new agreement.

In their 1992 negotiations, Local 104 and Ongaro met individually and not as part of Redwood SMACNA's multiemployer group to negotiate a new collective-bargaining agreement and resolve all contract issues.

At the outset of these negotiations, Local 104 presented Ongaro with the text of the Standard Form of Union Agreement, as the basis or starting point for their discussions. At the outset of the negotiations Ongaro took the position that all nonmandatory subjects of bargaining must be dropped from the collective-bargaining agreement. At all times during the 1992 negotiations Ongaro maintained that it wished to continue to bargain independently and at no time during these negotiations did Ongaro state that it would agree to rejoin the multiemployer bargaining group. At no time during the negotiations was there any claim by Local 104 that Ongaro was either a part of the multi-employer bargaining group represented by Redwood SMACNA or that Ongaro was required to join Redwood SMACNA and authorize Redwood SMACNA as

its collective-bargaining representative in order to consummate a collective-bargaining agreement.

During the 1992 negotiations, after numerous bargaining sessions, Ongaro and Local 104 reached impasse on a number of issues including wages, fringe benefits, contract duration, the most-favored-nations clause or equality of operations clause, and the ratio of air conditioning specialists to journeymen.

Pursuant to article X, section 8 of the 1989-1992 Standard Form Union Agreement, on impasse, Local 104 and Ongaro submitted the disputed issues to the National Joint Adjustment Board (NJAB). A written submission of the dispute was transmitted to the NJAB by Local 104 on or about June 26, 1992. As part of its written submission, Local 104 included Local 104's notes as to the parties' negotiations history, and some partial written bargaining proposals. Ongaro also made a written submission to the NJAB. Neither party made any specific proposal regarding the inclusion or exclusion of nonmandatory subjects of bargaining in their written or oral submissions to the NJAB.

By letter dated July 14, 1992, Local 104 agreed to allow Ongaro to discontinue payments to the Industry Fund (which go to Redwood SMACNA), and instead allowed Ongaro to make equivalent contributions to the Union's Wage Equality Fund (a fund administered by the Union from which money is provided to small signatory employers in the sheet metal business to allow them to bid competitively against nonunion competitors).

Ongaro appeared before the NJAB as an individual employer seeking its own agreement with Local 104 on August 10, 1992. At that time, the parties were directed by the NJAB to meet privately and resolve the remaining issues. The parties met and resolved some additional issues but returned to the NJAB and presented their respective positions. During all of their prior negotiations, as well as up to and during any oral presentation to the NJAB, the subject of whether Ongaro would or might, as part of any new agreement, reauthorize Redwood SMACNA to represent it or become part of any multiemployer bargaining unit was never discussed by either party.

On August 13, 1992, the NJAB issued a decision advising Local 104 and Ongaro that the NJAB was unable to reach a decision due to the press of business and that the matter would be deferred until November 9, 1992. By letter dated October 20, 1992, Local 104 advised the NJAB that Local 104 and Ongaro had no further independent negotiations.

The NJAB issued its decision on November 11, 1992. The decision stated, in pertinent part, as follows:

The parties are directed to execute a new three-year agreement identical in terms to the Standard Form of Union Agreement and three addenda thereto in effect between the Local Union and the

Redwood Empire Sheet Metal Contractors Association except it shall not include Article X, Section 8 and the most favored nations clause.

It is not the intent of the NJAB to impose any non-mandatory subjects of bargaining upon an unwilling party. In the event that the National Labor Relations Board or any court having jurisdiction over the matter determines that any provision of the agreement imposed by the NJAB herein is a non-mandatory subject of bargaining to which a party objected, that provision will be deleted and the parties, in that event[,] are directed to enter into negotiations to replace the deleted provision with one that is a mandatory subject of bargaining. In the event the parties cannot agree on a replacement for the non-mandatory provision, the NJAB retains jurisdiction to resolve that issue.

Included in the Standard Form of Union Agreement then in effect was article XIV, section 5, which provided as follows:

By execution of this Agreement the Employer authorizes (name of Local Contractor Association) to act as its collective-bargaining representative for all matters relating to this agreement. The parties agree that the Employer will hereafter be a member of the multi-employer bargaining unit represented by said Association unless this authorization is withdrawn by written notice to the Association and the Union at least one hundred and fifty (150) days prior to the then current expiration date of this Agreement.

After receipt of the NJAB decision, Local 104 did not present any collective-bargaining agreement document to Ongaro to sign, and Ongaro never executed one. Ongaro thereafter abided by all the mandatory terms and conditions of employment contained in the 1992-1995 Standard Form of Union Agreement as imposed by the NJAB's November 11, 1992 decision. From the time of the issuance of the NJAB decision in November 1992, and until November 8, 1994, Ongaro and Local 104 had no communication with each other about the topic of whether Ongaro was subject to multiemployer versus individual bargaining. During the same time period, Ongaro never gave any indication to Local 104 or anyone else that it considered itself part of any multiemployer bargaining group.

On December 2, 1992, Redwood SMACNA and the Bay Area Association of SMACNA Chapters (Bay Area SMACNA) entered into a Participation Agreement. Under this agreement, Redwood SMACNA agreed to assign to Bay Area SMACNA the bargaining rights of its members regarding Local 104 and appointed Bay Area SMACNA as its exclusive agent for purposes of labor negotiations and collective bargaining.

Ongaro received notices dated June 30, July 1, and October 25, 1994, sent by Redwood SMACNA and Bay Area SMACNA indicating that Local 104 and Bay Area SMACNA had reopened negotiations for an extension to the various SMACNA Agreements, including the Redwood SMACNA 1992-1995 Standard Form of Union Agreement. These notices were sent to all employers who were signatory to the 1992-1995 Standard Form of Union Agreement, regardless of whether they were part of the multiemployer bargaining unit or bargained individually as independent employers.

At no time has Ongaro specifically authorized Bay Area SMACNA to represent Ongaro in connection with any labor relations matters.

During these negotiations, in which Ongaro never participated, employers who were part of the multiemployer bargaining association and those who were independent employers and not a part of the association were notified that they should not pay the July 1, 1994 increase called for in the 1992-1995 Standard Form of Union Agreement. Ongaro did not pay the increase.

At a meeting held on October 29, 1994, the modifications to the 1992-1995 Standard Form of Union Agreement as agreed to by Bay Area SMACNA were ratified by the employee members of Local 104.

On November 8, 1994, Ongaro, by Richard Ongaro, sent letters to Local 104, to Redwood SMACNA, and to the Bay Area SMACNA stating its position that in 1992 it had revoked authorization from Redwood SMACNA to represent Ongaro in connection with any labor relations matters.

Ongaro received a letter dated January 13, 1995, from Tony Asher of Bay Area SMACNA, with an attached form to be completed. The letter, which was addressed to all contractors signatory to a collective-bargaining agreement with Local 104, set forth modifications that had been agreed on to the collective-bargaining agreement. The letter stated that all Association members were required to execute the modification agreement and that independent contractors not bound by the negotiations were required to indicate their acceptance or rejection of the modifications.

After receiving this letter, Ongaro wrote Local 104 a letter dated January 20, 1995, stating that Ongaro had not authorized SMACNA or any other association to negotiate on its behalf and that Ongaro's intention was to honor the existing collective-bargaining agreement until it expired. The letter further stated that Ongaro intended to negotiate its own independent agreement with Local 104 and therefore did not accept any option to amend or extend the collective-bargaining agreement.

Ongaro did not implement any changes negotiated between Local 104 and Bay Area SMACNA.³ Instead, Ongaro has continued to abide by all the mandatory terms and conditions of the 1992-1995 Redwood SMACNA Standard Form of Union Agreement.

On January 31, 1995, Richard Ongaro, on behalf of Ongaro, sent a letter to Local 104 serving notice of Ongaro's intent to terminate the 1992-1995 collective-bargaining agreement upon its expiration on June 30, 1995, and requesting that Local 104 contact Richard Ongaro to negotiate a new agreement.

Richard Ongaro subsequently received a letter from Local 104 dated March 30, 1995, stating that Local 104 believed that Ongaro was bound to the recently concluded contract negotiations with Bay Area SMACNA.

Ongaro, by Richard Ongaro, responded to Local 104's letter the next day, March 31, 1995.⁴ That letter states that Ongaro had been handling its own negotiations in the past, no SMACNA chapter was authorized to represent Ongaro, and that Ongaro intended to commence collective bargaining as soon as possible, and requested that Local 104, as the exclusive collective-bargaining representative of the unit, bargain collectively with Ongaro with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment of the unit.

Ongaro received a letter dated April 19, 1995, from Local 104's attorney, Kathryn Sure, replying to Ongaro's letter and stating in pertinent part:

Please be advised that Ongaro & Sons had not withdrawn from multiemployer bargaining in a timely fashion prior to the commencement of negotiations, and is therefore considered bound to the results of multiemployer bargaining. There have been no separate negotiations with [Local 104 representative] Mr. Whiteman and your company regarding this extension, nor will there be.

Since then, Ongaro has written additional letters to Local 104 dated June 14 and 26, 1995, requesting bargaining, but Local 104 has refused to bargain separately with Ongaro concerning terms and conditions of employment of the unit.

B. Contentions of the Parties

The General Counsel contends that Local 104 violated Section 8(b)(3) by refusing to bargain on an individual basis with Ongaro over a collective-bargaining agreement to succeed the one expiring June 30, 1995. According to the General Counsel, there is no evidence that, following its 1991 withdrawal from Redwood

SMACNA, Ongaro ever voluntarily agreed to rejoin Redwood SMACNA or any other multiemployer group. The General Counsel contends that Ongaro was not bound to multiemployer bargaining by its failure to specifically object, during the 1992 interest arbitration, to article XIV, section 5 of the 1992-1995 Standard Form of Union Agreement, which provides for membership in the multiemployer bargaining unit. The General Counsel notes that a party's intent to join a multiemployer unit must be clear and unequivocal. Ongaro, however, insisted at the outset of negotiations on deletion of all nonmandatory contract terms, which would include any provision requiring multiemployer bargaining. Additionally, the subject of returning to multiemployer bargaining was not raised by either party at any point in the negotiations. The General Counsel also notes that the Standard Form of Union Agreement itself is ambiguous as to membership in the multiemployer unit, because it expressly provides terms and conditions of employment for employees of employers who execute the agreement as individual employers as well as those who are members of Redwood SMACNA. The General Counsel further contends that the NJAB cannot impose a nonmandatory contract term on an unwilling party. Finally, the General Counsel notes that, while article XIV, section 5 of the Standard Form of Union Agreement states that by the execution of agreement the employer authorizes the multiemployer group to act as its bargaining representative, Ongaro never executed the agreement.

Ongaro contends that the NJAB's determination that Ongaro sign the standard form agreement does not constitute acquiescence on Ongaro's part that it intended to rejoin the multiemployer group. During negotiations, Local 104 never affirmatively requested that Ongaro rejoin the multiemployer group, nor was this subject even addressed. Additionally, neither party presented such a proposal to the NJAB. Ongaro further contends that its clear intent not to become part of the multiemployer group was shown by its actions in withdrawing from multiemployer bargaining prior to the 1992 contract negotiations, bargaining independently with Local 104, and proceeding as far as the NJAB to assure that it would not be subject to interest arbitration in subsequent contract negotiations. Additionally, Ongaro contends that the NJAB's decision does not bind Ongaro to multiemployer bargaining, because the decision states that it does not intend to impose any nonmandatory subjects on an unwilling party. Further, Ongaro notes that, subsequent to the NJAB decision, Local 104 never requested Ongaro to sign the Standard Form of Union Agreement, which contained language assigning bargaining rights to SMACNA.

Local 104 contends that its refusal to bargain with Ongaro on an individual basis was lawful because Ongaro had agreed to and was bound by the clause as-

³ The final agreement between Bay Area SMACNA and Local 104 was clarified in a document dated March 13, 1995.

⁴ Due to a typographical error, the letter was dated March 13, 1995. The date the letter was actually written was March 31, 1995.

signing bargaining rights to Redwood SMACNA contained in the 1992 contract resulting from the NJAB proceedings. Local 104 contends that Ongaro assented to the assignment of bargaining rights clause because that clause was not mentioned in Ongaro's statement of unresolved issues that it submitted to the NJAB. Further, the assignment of bargaining rights clause is binding and enforceable, and Ongaro unequivocally expressed its consent to be bound to multiemployer bargaining by assenting to this clause. Although imposition of a nonmandatory subject of bargaining on an objecting party is unlawful, the assignment of bargaining rights clause here, albeit a nonmandatory subject, was not imposed without Ongaro's consent, according to Local 104. Further, Local 104 contends that, subsequent to the 1992 NJAB decision, Ongaro never timely withdrew from multiemployer bargaining and that Ongaro's obligation to be bound to multiemployer bargaining was not affected by Redwood SMACNA's entering into a participation agreement with Bay Area SMACNA.

C. Discussion

The complaint in essence alleges that in 1995 Local 104 unlawfully refused to bargain with Ongaro on an individual basis over a new collective-bargaining agreement. Local 104 contends that it was privileged not to bargain with Ongaro on an individual basis because Ongaro had rejoined the multiemployer bargaining unit in 1992 and remained a member of that unit. We find that Ongaro did not rejoin the multiemployer unit in 1992, and we, therefore, conclude that Local 104's refusal to bargain individually with Ongaro violated Section 8(b)(3).

The controlling legal principle in this case is that forming or joining a multiemployer bargaining unit is consensual and that "to bind an employer to multiemployer bargaining in the first instance, there must be evidence of that employer's unequivocal intent to be bound by the actions of the multiemployer bargaining representative." *Plumbers Local 669 (Lexington Fire Protection Group)*, 318 NLRB 347, 348 fn. 14 (1995); see *Hunts Point Recycling Corp.*, 301 NLRB 751, 752 (1991); *Kroger Co.*, 148 NLRB 569, 573 (1964). We find that it has not been shown that Ongaro evinced a clear intent to be bound by the actions of the multiemployer representative.

The stipulated facts make clear that, during the 1992 collective-bargaining negotiations, Ongaro never manifested an intent to rejoin the multiemployer group. As an initial matter, Ongaro's 1991 notice of withdrawal from the multiemployer unit, which Ongaro reiterated as late as January 30, 1992, provided the predicate and context for Ongaro's independent contract negotiations with Local 104, which began only a few months later, in June 1992. At the outset of the contract negotiations

themselves, Local 104 presented the text of the Standard Form of Union Agreement as the starting point for discussion. At the outset of negotiations, Ongaro, for its part, took the position that all nonmandatory subjects of bargaining must be dropped from the collective-bargaining agreement. While the Standard Form of Union Agreement presented by Local 104 included an assignment of bargaining rights provision, Ongaro's opposition to nonmandatory bargaining subjects necessarily encompassed any provision requiring it to rejoin the multiemployer bargaining unit or to assign its bargaining rights to the multiemployer bargaining representative, as it is well established that such provisions constitute nonmandatory bargaining subjects.⁵ Further, at all times during the negotiations Ongaro maintained that it wished to continue to bargain independently and at no time did it state that it would agree to rejoin the multiemployer group. In fact, the subject of whether Ongaro would or might, as part of any new agreement, reauthorize Redwood SMACNA to represent it or become part of any multiemployer bargaining unit was never discussed. Thus, although the parties may have used the Standard Form of Union Agreement as a basis for their negotiations, there is not a scintilla of evidence that Ongaro ever expressed assent to any assignment of bargaining rights provision. Given Ongaro's opposition to nonmandatory subjects of bargaining in the contract, its adherence to its position that it wished to continue to bargain independently, and the absence of any discussion of Ongaro becoming part of any multiemployer bargaining unit, we find that the contract negotiations themselves were entirely devoid of any indication that Ongaro had an intent to rejoin the multiemployer group. To the contrary, Ongaro's conduct at the negotiations manifested Ongaro's intent to remain independent and bargain individually.

Additionally, once the parties reached a bargaining impasse and submitted their contract dispute to the NJAB, Ongaro's conduct likewise gave no evidence of an intent to rejoin the multiemployer unit. Contrary to Local 104's contention, Ongaro's mere failure to list the assignment of bargaining rights clause in the statement of unresolved issues submitted to the NJAB falls far short of demonstrating Ongaro's unequivocal intent to be bound to multiemployer bargaining. That Ongaro failed to include the assignment of bargaining rights clause as an unresolved issue does not necessarily indicate that Ongaro had agreed to that clause. It could just as easily have indicated that Local 104 had assented to Ongaro's desire to remain independent from the multiemployer group. Indeed, Ongaro may well have believed that assignment of its bargaining rights to the multiemployer group was not seriously in issue

⁵ See *Retail Clerks Local 770 (Fine's Food)*, 228 NLRB 1166, 1170 (1977).

in the negotiations, given that (1) Ongaro had only recently withdrawn from the multiemployer unit and embarked on independent contract negotiations with Local 104, (2) at all times during the negotiations Ongaro had maintained that it wished to continue to bargain independently, and (3) the subject of Ongaro's rejoining the multiemployer unit was never discussed during the negotiations. Thus, Ongaro may well have believed that Local 104 had acquiesced in Ongaro's determination to bargain independently.⁶ In sum, Ongaro's failure to include the assignment of bargaining rights clause in its list of unresolved issues could have indicated that the parties had agreed to Ongaro's continuation of its independent status or at least Ongaro's belief that the parties had so agreed. Under either scenario, the absence of the assignment of bargaining rights clause from Ongaro's list of unresolved issues would have indicated something quite different than Ongaro's unequivocal intent to be bound by the actions of the multiemployer bargaining representative. Accordingly, we find that Ongaro's mere failure to include the assignment of bargaining rights clause on its list of unresolved issues submitted to the NJAB was insufficient to show an unequivocal intent by Ongaro to rejoin the multiemployer group.

Additionally, the NJAB's decision itself does not purport to compel Ongaro to rejoin the multiemployer unit. The decision specifically states its intent not to impose any nonmandatory subjects of bargaining on an unwilling party and provides for deletion of any provision of the agreement imposed by the NJAB that is a nonmandatory subject of bargaining to which a party objected. As Ongaro clearly was unwilling to rejoin the multiemployer bargaining unit and objected to any nonmandatory subject of bargaining being contained in the contract, the NJAB decision cannot reasonably be viewed as imposing multiemployer bargaining on Ongaro. Further, Ongaro's conduct subsequent to the negotiations and the NJAB decision was entirely consistent with that of an employer that was not a member of the multiemployer unit.⁷ We therefore find that

⁶ A party cannot be compelled to join multiemployer bargaining. As noted above, joining multiemployer bargaining is not a mandatory subject of bargaining, and a union that insists to impasse on an employer's joining a multiemployer unit violates Sec. 8(b)(3). Additionally, an employer's freedom to refrain from joining a multiemployer bargaining unit is protected by Sec. 8(b)(1)(B)'s prohibition of union restraint or coercion of an employer in the selection of its collective-bargaining representative. See *Fine's Food*, above. Given the strong protections the Act affords parties wishing to retain independent bargaining status, Ongaro may well have believed that Local 104 had no choice but to acquiesce in Ongaro's determination to remain outside the multiemployer unit.

⁷ Although art. XIV, sec. 5, of the Standard Form of Union Agreement provides that "[b]y execution of this Agreement" the employer authorizes the contractor association to represent it, Local 104 never requested Ongaro to execute the agreement, and Ongaro never did so.

Ongaro never rejoined the multiemployer bargaining unit subsequent to its 1991 notice of withdrawal from the unit. Accordingly, we find that Local 104 was obligated to bargain on an independent basis with Ongaro for a new collective-bargaining agreement in 1995 and violated Section 8(b)(3) of the Act by refusing to do so.

CONCLUSION OF LAW

By failing and refusing, since March 30 and April 19, 1995, to bargain with Ernest Ongaro and Sons, Inc., concerning terms and conditions of employment of its bargaining unit employees, Local 104 has failed and refused to bargain in good faith in violation of Section 8(b)(3) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order the Respondent to cease and desist and to take certain affirmative action to effectuate the policies of the Act.

ORDER

The National Labor Relations Board orders that the Respondent, Sheet Metal Workers' International Association, Local Union No. 104, San Francisco, California, its officers, agents, and representatives, shall

1. Cease and desist from refusing to bargain in good faith with Ernest Ongaro and Sons, Inc., concerning the terms and conditions of employment of its employees in the following appropriate unit:

All employee classifications set forth in the collective-bargaining agreement between the Employer and the Union in effect from July 1, 1992, to June 30, 1995, excluding guards and supervisors as defined in the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with Ernest Ongaro and Sons, Inc., as the employer of the employees in the above-stated appropriate unit concerning their terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

(b) Within 14 days after service by the Region, post at its union office in San Francisco, California, copies of the attached notice marked "Appendix."⁸ Copies of the notice, on forms provided by the Regional Director for Region 20, after being signed by the Respondent's authorized representative, shall be posted by the Re-

⁸ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

spondent and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Within 14 days after service of the attached notice by the Region, sign and return to the Regional Director sufficient copies of the notice for posting by Ernest Ongaro and Sons, Inc., if willing, at all places where notices to employees are customarily posted.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain in good faith with Ernest Ongaro and Sons, Inc., concerning the terms and conditions of employment of its bargaining unit employees.

WE WILL, on request, bargain with Ernest Ongaro and Sons, Inc., as the employer of its bargaining unit employees concerning their terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

SHEET METAL WORKERS' INTER-
NATIONAL ASSOCIATION, LOCAL UNION
NO. 104